

TESTIMONY OF  
NORTHWEST MONTANA ASSOCIATION OF REALTORS  
SENATE BILL NO. 39  
House Federal Relations, Energy and Telecommunications Committee  
January 28, 2009

Presented by Don MacIntyre

Senate Bill No. 39 introduced by Senator Juneau, and co-sponsored by Calf Boss Ribs, Brueggeman and Fleming, seeks to extend the period for suspension of adjudication proceedings during negotiations of federal Indian and non-Indian reserved water rights. If negotiations are unsuccessful Senate Bill No. 39 would extend the time for a tribe or federal agency to file all of its claims for reserved rights in the Water Court.

Effectively, Senate Bill No. 39 provides that while negotiations for a compact, such as on the Flathead Indian Reservation, are being pursued, all proceedings to adjudicate reserved water rights in the Montana Water Court are suspended. The law currently provides that the suspension is operative until July 1, 2009. Senate Bill No. 39 would extend the period until July 1, 2013. Although the Bill does not specifically extend the life of the Reserved Water Rights Compact Commission, it does allow compact negotiations to go forward without the necessity of the Tribes filing its water right claims in the adjudication process until July 1, 2013.

Based upon a review of the negotiation sessions and the underlying technical and legal work that is on-going it would appear that a comprehensive and well-thought out compact that could be easily understood by all stakeholders on or around the Flathead Indian Reservation cannot be accomplished by July 1, 2009. Clearly, Montana, the Salish and Kootenai Tribes of the Flathead Indian Reservation and the Federal government have made progress on the settlement of a reserved water rights compact. Under such conditions an extension should be granted. However, in doing so, the legislature should make known its support for public meetings that more fully educate the public as to the work of the legal and technical committees. It is simply a fact that the general public cannot hire the lawyers and the technical expertise necessary to independently understand what is being proposed and agreed to by the compacting parties. Without educational meetings public comment will continue to be relatively non-existent.

Senate Bill No. 39 also proposes to extend the time in which to file all Indian claims for reserved water rights that have not been resolved by a compact from 6 months to 60 months. The House of Representatives has amended the time to 24 months. This provision is a litigation issue that goes to the heart of preparation for litigation in the Water Court. Because it is an issue that goes to the Water Court adjudication process, the Association defers to the State of Montana. Nevertheless, it should be noted that such an extension, if the Bill is passed and negotiations are not successful, would put claims filing out to 1.5 years beyond any projections under the existing law.

A copy of the NWMAR resolution supporting an extension has been submitted to the Secretary for inclusion in the record of this hearing.



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EXHIBIT 1

DATE 1-28-09

SB 39

## RESOLUTION

OF

## NORTHWEST MONTANA ASSOCIATION OF REALTORS

### CONCERNING EXTENSION OF THE RESERVED WATER RIGHTS COMPACT COMMISSION

WHEREAS, the State of Montana initiated a general adjudication of the water rights in the State of Montana pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes the reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation;

WHEREAS, the adjudication of the Confederated Salish and Kootenai Tribes water rights under state law have suspended while negotiations have proceeded to conclude a compact resolving all reserved water rights claims of the Confederated Salish and Kootenai Tribes;

WHEREAS, the Northwest Montana Association of Realtors believes it may be in the best interest of all existing and future water users on the Flathead Indian Reservation and the Flathead River basin that the reserved water rights claims of the Confederated Salish and Kootenai Tribes be settled through a Water Rights Compact;

WHEREAS, the Northwest Montana Association of Realtors supports the quantification of Tribal water rights through a careful and deliberate development of a compact through negotiation rather than through litigation;

WHEREAS, the Northwest Montana Association of Realtors supports the development of a compact that allows for a fair and efficient administration of water rights on the Flathead Indian Reservation;

WHEREAS, the Northwest Montana Association of Realtors believes the Tribes, the State, and the Federal Government have entered into good faith negotiations for the quantification of the reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation;

WHEREAS, the Northwest Montana Association of Realtors recognizes the complexity of negotiating a compact that comprehensively: (1) quantifies the tribal water rights; (2) provides

for the protection of water rights under state law; and, (3) provides for the administration of water rights within the exterior boundaries of the reservation; and,

WHEREAS, the Northwest Montana Association of Realtors recognizes that public participation in a complex compact negotiation process requires that the public be fully educated as to the proposed terms and conditions of compact prior to expressing any comments or opinions regarding any proposed terms and conditions of the compact.

THEREFORE BE IT RESOLVED, that the Northwest Montana Association of Realtors notify the representatives of the State of Montana Reserved Water Right Compact Commission, the Confederated Salish and Kootenai Tribes, and the Federal Government of its support of the efforts of the parties to conclude a fair and equitable Salish & Kootenai Tribes/Montana Water Right Compact.

BE IT FURTHER RESOLVED that the Northwest Montana Association of Realtors supports the following so that a fair and equitable Salish & Kootenai Tribes/Montana Water Right Compact can be achieved:

- (1) legislation to extend the existence of the Montana Reserved Water Rights Compact Commission beyond June 30, 2009 and shall not exceed beyond June 30, 2011;
- (2) while efforts to develop an administration process move forward, the quantification of tribal reserved water rights and aboriginal rights be the priority in the negotiation process; and,
- (3) offer educational forums to the public prior to formal meetings of the negotiating teams so that the legal and technical staffs of the compacting parties can explain any proposed terms and condition so that effective public participation can be assured.

Signature: Barb Funk  
Barb Funk, NMAR President-Elect

Date: 1-7-09